



AFTER DOMA

WHAT IT MEANS FOR YOU

The Supreme Court victory in *United States v. Windsor* striking down the discriminatory federal Defense of Marriage Act (DOMA) affirms that all loving and committed couples who are married deserve equal legal respect and treatment from the federal government. The demise of DOMA marks a turning point in how the United States government treats the relationships of married same-sex couples for federal programs that are linked to being married. At the same time, a turning point is part of a longer journey, not the end of the road. There is much work ahead before same-sex couples living across the nation can enjoy all the same protections as their different-sex counterparts.

Keep in Mind:

- The Supreme Court's ruling in *Windsor* applies only to the federal government. It does not change discriminatory state laws excluding same-sex couples from state-conferred marriage rights.
- Federal agencies—large bureaucracies—may need and take some time to change forms, implement procedures, train personnel, and efficiently incorporate same-sex couples into the spousal-based system.
- Until same-sex couples can marry in every state in the nation, there will be uncertainty about the extent to which same-sex spouses will receive federal marital-based protections nationwide. For federal programs that assess marital status based on the law of a state that does not respect marriages of same-sex couples, those state laws will likely pose obstacles for legally married couples and surviving spouses in accessing federal protections and responsibilities.
- Securing fair access to federal protections that come with marriage for all same-sex couples in the nation will take some time and work. In some situations, it may require Congressional action or formal rule-making by agencies.
- Before making a decision, it is essential that you consult an attorney for individualized legal advice. This is particularly important for people who are on certain public benefits, as getting married may jeopardize your eligibility without providing you the full measure of protections other married couples enjoy. In addition, couples who travel to another place to marry and then return to live in a state that does not respect their marriage may be unfairly unable to obtain a divorce, which can lead to serious negative legal and financial consequences. People must make careful decisions when and where to marry, even as we work together to end this injustice.
- We are committed to winning universal access to federal marital protections for married same-sex couples through ongoing public policy advocacy, and, where necessary, strategic litigation. Contact our organizations if you have questions, for updates and to learn more about what you can do to achieve full equality for those who are LGBT.

This Guidance is intended to provide general information regarding major areas of federal marriage-based rights and protections based on how the various federal agencies have administered federal benefits. ***It should not be construed as legal advice or a legal opinion on any specific facts or circumstances, and does not create an attorney-client relationship.*** Past practice is no guarantee of future developments. While laws and legal procedure are subject to frequent change and differing interpretations in the ordinary course, this is even more true now as the federal government dismantles DOMA and extends federal protections to same-sex couples. None of the organizations publishing this information can ensure the information is current or be responsible for any use to which it is put.

No tax advice is intended, and nothing therein should be used, and cannot be used, for the purpose of avoiding penalties under the Internal Revenue Code.

Contact a qualified attorney in your state for legal advice about your particular situation.

THE SUPREME COURT RULING ON THE DEFENSE OF MARRIAGE ACT: WHAT IT MEANS

The Supreme Court's historic ruling striking down Section 3 of the discriminatory Defense of Marriage Act (DOMA) is an enormous victory for loving, married couples and their families, and affirms that they deserve equal treatment under the law. This victory demonstrates the importance of access to marriage, and gives married same-sex couples access to the tangible benefits of the federal safety net, allowing them to better protect one another and their children.

Edie Windsor demonstrated tremendous courage in standing up and speaking out for her 44-year relationship and marriage when she was treated unjustly, and her actions have directly improved the lives of all same-sex couples.

Ending DOMA lifts up all LGBT people, even if it does not end our work. DOMA was an official federal policy disapproving of gay people and same-sex relationships, often imitated by states and private actors, and imposed a second-class status on our lawful marriages by negating them for all federal purposes. The Court has now affirmed that equal protection guarantees apply to the relationships of LGBT people and has replaced federal disrespect with federal *respect* for our lawful marriages. This victory will energize our work moving forward so that we can achieve a reality in which every single same-sex couple enjoys full and equal protections under the law, regardless of where they live.

For legally married couples living outside of a marriage state or the District of Columbia, there are still many questions about when they will be equally able to share in federal protections, responsibilities, and programs. This is because the federal government typically defers to the states in determining whether a couple's marriage is valid. There is no one rule across all federal agencies. Some agencies look to the law of the state where a couple married regardless of the law of the state where the couple now lives, while others look to the law of the state where the couple is living now.

We think the federal government can and should take action, where necessary, to ensure that married couples in all states have access to the largest number of federal programs. The federal government is already looking at how federal agencies can ensure fair and equal treatment of all married couples where possible. However, at this time, there are a number of important federal benefits that depend on whether your marriage is recognized where you live, so couples who live in states with bans on marriage by same-sex couples should proceed with caution before making the decision to marry.

CAUTION: If you live in a state that discriminates against married same-sex couples, you should be aware that the Supreme Court decision striking down part of the federal so-called Defense of Marriage Act does NOT mean that your state must respect your marriage or that you will be eligible for all marriage-based federal benefits. Further work is still required to end marriage discrimination nationwide and to secure both state and federal equal treatment for all marriages.

This series of fact sheets produced together by:

American Civil Liberties Union | Center for American Progress | Family Equality Council | Freedom to Marry | Gay & Lesbian Advocates & Defenders
Human Rights Campaign | Immigration Equality | Lambda Legal | National Center for Lesbian Rights | National Gay and Lesbian Task Force | OutServe-SLDN.

Depending on your individual circumstances, the current patchwork of discriminatory laws may be financially detrimental to you or your partner and may create financial and legal complications for you and your family. Before making a decision, it is essential that you consult an attorney for individualized legal advice. This is particularly important for people who have or are applying for government benefits. Getting married may jeopardize your eligibility for certain public benefits without providing you the full measure of protections other married couples enjoy. In addition, if you travel to another place to marry and then return to live in a state that does not respect your marriage, you may be unfairly unable to obtain a divorce, which can lead to serious negative legal and financial consequences. Same-sex couples will continue to endure a mix of respect, discrimination, and uncertainty until we have secured the freedom to marry and full respect nationwide. People must make careful decisions when and where to marry, even as we work together to end this injustice.

The following questions lay out what we know so far.

What does this mean for legally married same-sex couples living in a state that respects their marriage?

Same-sex couples who are legally married and live in a state that respects their marriage should be eligible virtually right away for the same protections, responsibilities, and access to federal programs afforded to all other married couples. The federal government may take some additional time to change forms, train staff, and otherwise prepare for this change. We expect further guidance from the federal government and will update this Q&A and the “After DOMA: What it Means For You” LGBT Organization Fact Sheet Series accordingly.

There are more than 1,100 places in federal law where a protection or responsibility is based on marital status. A few key examples include access to Social Security survivors’ benefits; the option to use family medical leave to care for a spouse; the opportunity to sponsor a foreign-born spouse for citizenship; and access to veterans’ spousal benefits.

What about legally married same-sex couples living in a state that does not respect their marriages?

Legally married same-sex couples living in a state that does not respect their marriages may right away have access to *some* federal rights and benefits, but not to many others, at least not immediately. Federal agencies have different approaches regarding which state’s laws they look to in order to determine if a marriage is valid for federal purposes. Some, including the IRS and Social Security, have looked to the laws of the state where a couple lives (*place of domicile/residence*). Others, including immigration agencies, look to where a couple got married (*place of celebration*). Other federal agencies and programs look to the state “with the most significant interest” in the marriage, and many have no explicit rule at all.

Some federal programs, including immigration, already use a “place of celebration” standard. This standard best provides certainty, clarity, and stability for couples, their loved ones, employers, government agencies, and others, especially in a society where people regularly move for jobs, family, and many other purposes. Such a standard would simply acknowledge that a couple is married for federal purposes regardless of where the couple lives; it wouldn’t tell a state how it must treat married same-sex couples.

For many programs, the administration can take steps to adopt the standard fairest to all married couples: the “place of celebration” standard. Some agencies can use this time-honored legal standard just by changing their practices. Others may have to change regulations, requiring a more lengthy

process of proposing new rules and soliciting public comments, or laws. Because the Supreme Court’s decision does not require states to recognize the marriage of same-sex couples and does not guarantee that married couples who live in states with marriage bans will receive all of the federal benefits based on marriage, couples who live in these states should proceed with caution before deciding to marry. Depending on your individual circumstances, getting married may be financially or legally detrimental, especially if you are receiving certain government benefits. Couples should seek out individualized legal advice from a knowledgeable attorney before traveling to another place to marry.

Will legally married same-sex couples receive retroactive access to benefits they were previously denied?

It depends on a number of circumstances. As a general matter, if a person is not prohibited by a deadline in the law from seeking benefits, he or she may file an application and seek certain back benefits. However, many benefits start to accrue only with an application, so the date of application will be the starting point. For claims reaching into the past, as with claims for overpaid taxes, there are specific time limits on when refund claims may be brought forward. The “After DOMA: What it Means For You” LGBT Organization Fact Sheet Series addresses many of these questions.

There are many financial benefits that married same-sex couples have missed out on because the federal government did not respect their marriage. But it is likely that the federal government will, in most instances, adopt a forward-looking approach, ensuring that married same-sex couples are respected as married from the day the Court’s ruling takes effect.

Is all of DOMA now completely repealed?

No. The *Windsor* case challenged the constitutionality of Section 3 of DOMA, the part that discriminatorily excluded married same-sex couples from federal protections, responsibilities, and programs. Section 2 of DOMA, which says that states may discriminate against gay couples legally married in other states, still stands. Legislative action will be needed to remove it, although getting rid of Section 2 will not eliminate discriminatory state marriage laws.

The Respect for Marriage Act, a bill pending in Congress that enjoys bipartisan support and the backing of President Obama, would fully repeal all of DOMA. It would also ensure that all married couples — including same-sex couples — enjoy equal rights under federal law. It would not tell states what to do, but would ensure that the federal government treats all marriages with respect.

What are the movement’s next steps on DOMA?

The undersigned LGBT organizations are working with others in the Respect for Marriage Coalition to ensure that the greatest number of federal protections, responsibilities, and programs are available to married couples as soon as possible. In some cases, this may require policy and regulatory changes within the agencies, some of which could take time. Further legislative action may also be needed, particularly to get rid of the rest of DOMA. To that end, we will continue to advocate for the Respect for Marriage Act in Congress.

We are committed to working until every single legally married same-sex couple receives the same protections, responsibilities, and programs as all other married couples — regardless of where they live — and to securing the freedom to marry nationwide.

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Implementation of federal rights, benefits, and protections will vary from state to state and on an individual basis. We encourage you to consult a legal or tax professional to determine the best next steps you can take. This document is intended to provide an educational overview, not to serve as legal advice or a guide for making personal financial decisions



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AMERICAN CIVIL LIBERTIES UNION

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